

COUNTY OF KAUA'I
Minutes of Meeting
OPEN SESSION

Board/Commission:	CHARTER REVIEW COMMISSION	Meeting Date	April 23, 2018
Location	Mo'ikeha Building, Meeting Room 2A/2B	Start of Meeting: 3:00 p.m.	End of Meeting: 4:15 p.m.
Present	Chair Carol Suzawa; Vice Chair Jan TenBruggencate; Members: Ricky Watanabe, Marissa Sandblom, and Patrick Stack Also: Deputy County Attorney Adam Roversi; Boards & Commissions Office Staff: Administrative Specialist Lani Agoot and Administrator Nicholas R. Courson		
Excused	Virginia Kapali and Galen Nakamura		
Absent			

SUBJECT	DISCUSSION	ACTION
	Prior to the start of the meeting Administrative Assistant to the County Clerk Eddie Topenio gave the Oath of Office to new Commissioner Patrick Stack.	
Call To Order		Chair Suzawa called the meeting to order at 3:00 p.m. with five commissioners present.
Approval of Minutes	<u>Open Session Minutes of March 19, 2018</u>	Mr. TenBruggencate moved to approve the Open Session minutes of March 19, 2018, as circulated. Mr. Stack seconded the motion. Motion carried 5:0.
Executive Session	<u>ES-007 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92-5(a) (4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to CRC 2017-08, a proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C), relating to Public Access, Open Space, and Natural Resources Preservation Fund, expanding the permissible uses of the fund to include the improvement and maintenance of acquired lands or</u>	Mr. TenBruggencate moved to go into Executive Session at 3:01 p.m. Mr. Watanabe seconded the motion. Motion carried 5:0.

SUBJECT	DISCUSSION	ACTION
	<p><u>property entitlements, and existing public beach accesses. (deferred 11/27/17, 12/18/17, 1/22/18, 2/26/18, 3/19/18)</u></p> <p><u>ES-008 Pursuant to Hawai‘i Revised Statutes §92-4, §92-5(a) (4), §92-9(a) (1-4), the purpose of this executive session is for the Commission to approve the Executive Session meeting minutes of March 19, 2018, and to consult with its attorney on issues pertaining to the Commission’s powers, duties, privileges, immunities, and/or liabilities as they may relate to this agenda item</u></p>	
<p>Return to Open Session</p>	<p><u>Ratify Commission actions taken in Executive Session for items: ES-007 and ES-008.</u></p>	<p>The meeting resumed in Open Session at 3:19 p.m.</p> <p>Mr. TenBruggencate moved to ratify the actions taken in Executive Session for ES-007 and ES-008. Ms. Sandblom seconded the motion. Motion carried 5:0.</p>
<p>Business</p>	<p><u>CRC 2017-08 Proposed Charter Amendment to Amend Article XIX, Financial Procedures, Section 19.15(C), relating to the Public Access, Open Space, and Natural Resources Preservation Fund, expanding the permissible uses of the fund to include improvement and maintenance of acquired lands or property entitlements, and existing public beach accesses. (deferred 11/27/17, 12/18/17, 1/22/18, 2/26/18, 3/19/18)</u></p> <p>Deputy Planning Director Ka‘āina Hull stated that the Open Space Commission met on Thursday and upon reviewing the proposed Charter amendment that was approved by the Charter Review Commission, they had some concerns regarding the phrases “and maintenance” and “or maintenance.” Their concern was that the Open Space Fund could potentially be used solely for</p>	

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	<p>maintenance purposes and not land acquisition. He said there is a recognized need for initial improvements to some of the Open Space Commission’s projects and potential accesses that already exist only on maps. Mr. Hull stated that the Open Space Commission has made it their task to – should the proposal be adopted – attempt to secure some form of community organization or commitment from a State agency to maintain the site once the initial improvement was complete. He said the Open Space Commission’s recommendation is to remove “and maintenance” from C.1 and “or maintenance” from C.3.</p> <p>Chair Suzawa asked if there is a projection with regard to the portion of the fund that would be used for improvements to which Mr. Hull said the funds that would be used for improvements to existing coastal accesses would be to identify, survey, and demarcate accesses. He said one problem with existing coastal accesses is that oftentimes homeowners in the area will remove the demarcation; however, he didn’t think a large portion of the fund would be needed to improve and/or demarcate coastal accesses. Mr. Hull added with regard to improvements to other property acquisitions, it would be up to the Open Space Commission and ultimately up to Council to approve or deny any proposed improvements. Chair Suzawa stated that she would be more comfortable if the amount to be used for improvements was limited to make sure there would be sufficient funds for acquisition. Mr. Hull stated that he wasn’t in a position to object or support putting a cap on the funds for improvements and would have to take Chair Suzawa’s concern back to the Open Space Commission for further discussion. He said whether or not the funds are capped, the intention is that if the community feels a particular improvement is appropriate and Council agrees, it would be incumbent upon Council to either approve or deny the proposal.</p> <p>Ms. Sandblom asked Mr. Hull if it was the Open Space Commission’s intention to define improvement on a case-to-case basis to which Mr. Hull clarified that should the proposed amendment be adopted, a recommended ordinance amendment would be required and further details would need to be flushed out regarding what would constitute an improvement.</p> <p>Chair Suzawa asked if it was difficult to create a percentage for improvements because she felt it would give the community a better sense that the fund would be available for the purpose it was</p>	

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	<p>created for. Mr. Hull stated that right now the Open Space Fund has 6.5 million dollars. If 25%, for example, of the fund was used for improvements, it would leave a significant amount for land acquisition. However, currently Council has a draft bill on their agenda to expend 5.6 million dollars for a parcel at Black Pot Beach Park, which would fairly deplete the fund, leaving very little for improvements based on a 25% cap. He added that he couldn't speak to a specific percentage amount for a cap, but if the Charter Review Commission wanted to propose a specific percentage, he would take the proposal to the Open Space Commission for their input.</p> <p>Ms. Sandblom stated that when the proposed Charter amendment first came before the Charter Review Commission, a 25% cap was discussed. She said part of the discussion was that checks and balances exist to ensure that the fund wouldn't be abused. Mr. Hull said the checks and balances are that any appropriation of funds for improvements would have to be agendaized, go through a budgetary process, a public hearing, a committee referral at Council, action at the committee, and then sent to full Council for decision-making. He said the Open Space Commission understands that the proposed amendment is the process they need to move forward with acquisitions because there have been hurdles in the past where an acquisition may have been possible but there was no ability to improve the site; therefore, it would be an acquisition in which the site would remain derelict.</p> <p>Mr. TenBruggencate asked for further clarification regarding the proposed acquisition of the Black Pot Beach parcel to which Mr. Hull explained that the acquisition was initiated at Council in Executive Session while dealing with the condemnation proceedings of another parcel in that area, which is why, during the negotiations, it couldn't be referred to the Open Space Commission because it was confidential. Once a settlement was reached, the proposed acquisition went on Council's agenda and the Open Space Commission found out about it. He said the Open Space Commission Chair voiced his opposition to the proposal taking place without the Open Space Commission's review. Council then forwarded their proposed draft bill to the Open Space Commission for review, and the Commission made a recommendation that the proposal for the acquisition is in-line with four of the Open Space Fund's objectives and recommended approval of the acquisition. Mr. Hull added that the recommendation includes that any acquisition should not exceed the assessed value of the property, and anything beyond the assessed value should come</p>	

SUBJECT	DISCUSSION	ACTION
	<p>from another funding source.</p>	<p>Mr. TenBruggencate moved to amend CRC 2017-08 by removing “for maintenance” in C.1 and “or maintenance” in C.3. Mr. Watanabe seconded the motion. Motion carried 5:0.</p>
	<p><u>CRC 2017-13 Proposed Charter Amendment allowing the Salary Commission complete authority to establish the salaries of all elected and appointed officials. (deferred 1/22/18, 2/26/18, 3/19/18)</u></p> <p>Mr. TenBruggencate stated that he recalled from the last meeting that Human Resources Director Janine Rapozo was satisfied with the decision that the Commission not add language into the Charter referring to County agencies that are not in the Charter and allow the Salary Commission the latitude to add those positions as they see fit.</p> <p>Mr. Courson provided that 23.01(D) doesn’t have a list of Chartered department heads and read the following: <i>“(1) The term officer shall include the following: mayor, prosecuting attorney, and members of the council; (2) Any person excluded from Chapter 76, HRS and the position classification plan who is appointed as administrative head of any department or agency of the county or as a member of any board or commission; (3) Deputies appointed by the administrative head of any department or agency of the county who are excluded from Chapter 76, HRS and the position classification plan.”</i></p> <p>Mr. TenBruggencate stated that based on the language provided by Mr. Courson and the legal opinion that was given to the Salary Commission, the agencies not included in the Salary Commission’s list should be included.</p>	<p>Mr. TenBruggencate moved to approve CRC 2017-13. Mr. Watanabe seconded the motion.</p>

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	<p>Mr. Courson said that interpretations differ with regard to who is excluded from Chapter 76, civil service law, and what exclusion means. He said he has never seen a legal opinion or the logic, but if those positions – specifically the Executives on Aging and Transportation – could accurately be described as excluded from collective bargaining and administrative heads, they would fall under the definition of officers as defined.</p> <p>Ms. Sandblom stated a key point is that the amendment also includes the addition of the Director of Human Resources and the Director of Finance to ensure the Salary Commission doesn't set inappropriate salaries.</p> <p>Mr. Stack voiced his concern that the amendment would allow the Salary Commission “complete” authority, saying that complete authority is not something that works in a democratic society.</p> <p>Mr. TenBruggencate provided clarification regarding the proposed language, saying that for many years the Salary Commission has gone through a long process of comparing salaries, doing research, and providing salary recommendations to Council for approval just to have Council reject their proposals. He said the goal is that once the Salary Commission goes through their process, their recommendation becomes law without Council's approval.</p> <p>Mr. Courson provided that the Salary Commission would only have the complete authority to set a maximum salary; the actual amount that any person would get paid would be at the discretion of their respective appointing authority.</p> <p>Ms. Sandblom stated that the Commission had concerns when the amendment was initially proposed and through the course of discussions and opinions, the language is more to nullify a potential political problem. She said when you look at the proposed language, also inserted was the need to have the Director of Human Resources and the Director of Finance as part of the process.</p> <p>Mr. TenBruggencate said the word “complete” is to make it clear that the authority is no longer shared with Council; however, he wouldn't object to removing “complete” from the proposed</p>	

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	amendment.	Mr. TenBruggencate moved to amend CRC 2017-13 by removing the word “complete.” Mr. Stack seconded the motion. Motion carried 5:0. Motion, as amended, carried 5:0.
	<u>CRC 2017-14 Proposed Charter Amendment to Amend Article VII, Subsection 7.06 by giving the Administrator of the Office of Boards and Commissions the authority to appoint or procure a hearings officer for the County of Kaua’i (deferred 3/19/18)</u>	Mr. TenBruggencate moved to approve CRC 2017-14. Mr. Watanabe seconded the motion. Motion carried 5:0.
Announcements	<u>Next Meeting: Monday, May 21, 2018, 3:00 p.m., in the Mo’ikeha Building, Meeting Room 2 A/B</u>	
Adjournment		Chair Suzawa adjourned the meeting at 4:15 p.m.

Submitted by: _____
 Lani Agoot, Administrative Specialist

Reviewed and Approved by: _____
 Carol Suzawa, Chair

- () Approved as circulated.
- () Approved with amendments. See minutes of _____ meeting.